IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

OP.No. 25525 of 2001(L)

PETITIONER:

T.D.PATHROSE,
H.S.A.(RETIRED) GOVT. H.S.PUTHUVELY,
MONIPPALLY, KOTTAYAM.

BY ADV. SRI.J.JULIAN XAVIER
SRI.RAJESH THOMAS

RESPONDENTS:
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1. **STATE OF KERALA,**
REPRESENTED BY ITS SECRETARY,
GENERAL EDUCATION DEPARTMENT,
GOVT. OF KERALA, THIRUVANANTHAPURAM.

2. **ACCOUNTANT GENERAL (A& E),**
KERALA, THIRUVANANTHAPURAM.

3. **DEPUTY DIRECTOR OF EDUCATION, KOTTAYAM.**

4. **HEADMISTRESS,**
GOVT.H.S.PUTHUVELY, MONIPPALLY, KOTTAYAM.

BY GOVERNMENT PLEADER SRI. K.V. MANOJ for R1

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.41525/2001 IN O.P.NO.25525/2001 L

DISMISSED

7/06/2007 **SD/-T.R.RAMACHANDRAN NAIR,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER DTD. 21/04/99.**

EXT.P2: **COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN O.P.NO.9106/94 REPORTED IN 1996 (1) KLT SN 3.**

EXT.P3: **COPY OF THE ORDER DTD. 3/02/96 PASSED BY THE SECRETARY, FINANCE DEPARTMENT.**

EXT.P4: **COPY OF THE ORDER DTD. 4/12/96.**

EXT.P5: **COPY OF THE JUDGMENT DTD. 26/05/99 IN O.P.NO.12608/99.**

EXT.P6: **COPY OF THE REPRESENTATION DTD. 2/06/99 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.**

EXT.P7: **COPY OF THE LETTER DTD. 19/06/2001 ISSUED BY THE 3RD RESPONDENT.**

EXT.P8: **COPY OF THE ORDER COMMUNICATED BY THE 3RD RESPONDENT TO THE COUNSEL FOR THE PETITIONER TD. 19/06/2001.**

/TRUE COPY/

KSS

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.25525 of 2001-L.

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Dated this the 7th day of June, 2007.

J U D G M E N T

The petitioner retired from service on 31-3-1997 while working as a Teacher in a Government School. She completed the age of 55 years on 30-11-1996. In view of the special provision of Part I, Rule 60(c) Kerala Service Rules she continued till the end of the academic year. The Government by order GO(P) No.3000/98/Fin. dated 25-11-1998 ordered revision of scales of pay of Government employees, staff of educational institutions, local bodies etc. which was effective from 1-3-1997. Aggrieved by the denial of pay revision benefits in spite of exercise of re-option, the petitioner approached this Court earlier by filing OP.No.12608/1999. Pursuant to the direction issued in the above case the Government passed Ext.P8 taking the view that Teachers who continue in service beyond the date of superannuation, by virtue of Rule 60(c), Part I KSR will not be eligible to increment or promotion and the pensionary benefits will be determined taking into account the actual date of superannuation ie. on completion of 55 years of age. The said view taken by the Government is against the decision of this Court and that of the

Supreme Court in *State of Kerala v. Neelakandan Nair* (2005(3) KLT 717). The Apex Court has held that all teachers who continued in service till 31-3-1997 are entitled to the benefit of the revised pay scales. The decision of the Full Bench reported in *Accountant General v. Neelakantan Nair* (2003(3) KLT 525) was affirmed in the said decision. Ext.P3 is an earlier decision of a learned Single Judge of this Court rendered in similar circumstance. It was held therein that since Rule 60(c) of Part I K.S.R. statutorily postpones the date of superannuation, the reoption exercised is liable to be accepted and all monetary benefits including pensionary benefits have to be granted. In a recent decision of a Division Bench of this Court in *State of Kerala v. Gopalakrishna Pillai* (2007(1) KLT 764), also the same question was considered. It was held that the benefit of pay revision will be applicable to teachers who continued until the end of the academic year beyond attaining the age of 55 years.

2. In view of the dictum laid down in the above cases, the stand taken in Ext.P8 is not correct and therefore Ext.P8 is quashed. The petitioner is entitled for the benefit of pay revision ordered by GO(P) No.3000/98/Fin. dated 25-11-1998. The pay and allowances and retirement benefits will have to be worked out as he having retired from service

on 31-3-1997 after accepting the option exercised by the petitioner. The benefits due to him will be quantified and disbursed within a period of four months from the date of production of a copy of this judgment.

The Original Petition is allowed as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-